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GOVERNOR



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DEPUTY SECRETARY

State of Louisiana
Department of Public Safety and Corrections
Public Safety Services

June 2, 2011

TO: CHIEF RONAL W. SERPAS
SUPERINTENDENT OF POLICE
NEW ORLEANS POLICE DEPARTMENT

FROM: CAPTAIN WILLIAM DAVIS, INTERNAL AFFAIRS
MAJOR MURPY PAUL, BUREAU OF INVESTIGATIONS
RONNIE JONES, OFFICE OF THE SUPERINTENDENT
LOUISIANA STATE POLICE

SUBJECT: AN INVESTIGATION INTO ALLEGED MISCONDUCT OF
DEPUTY CHIEF MARLON DEFILLO

LSP CASE #: 11-007

NOPD PIB#: 2011-0345-R

As directed by Colonel Michael Edmonson, and on behalf of New Orleans Police Department Chief Ronal Serpas, an administrative investigation has been conducted into allegations of misconduct on the part of Deputy Chief Marlon Defillo. The results of that investigation are detailed below.

BACKGROUND

In a letter to NOPD Public Integrity Bureau Assistant Chief Arlinda Westbrook, New Orleans attorney Eric Hessler requested that an investigation be conducted into potential misconduct committed by Deputy Chief Marlon Defillo. The allegations are based on testimony provided by Chief Defillo during course of the federal investigation into the death of Henry Glover and the subsequent federal trial.

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During the course of this investigation, the following individuals were interviewed:

ICE/HSI, ASAC Roland Jones	-	Gulfport, MS
Chief Medical Investigator, John Gagliano	-	New Orleans, LA
New Orleans Forensic Center		
ICE/HSI Special Agent Rod Baudy	-	New Orleans, LA
Captain Bruce Adams, NOPD	-	New Orleans, LA
ICE/HSI Special Agent Robert Reid	-	New Orleans, LA
HSI Public Affairs, Temple Black	-	New Orleans, LA
Deputy Chief Marlon Defillo, NOPD	-	New Orleans, LA

The following information is taken directly from Eric Hessler's letter of complaint to Assistant Chief Westbrook. (Tab 2)

1. *Chief Defillo testified under oath that in June of 2008 a federal agent told him of the allegation that Henry Glover had been shot by the police, and his body burned behind the levee. Chief Defillo confirmed a body had been burned in this location, but learned that the cause of death could not be determined due to the condition of the body. By his own sworn testimony, Chief Defillo admitted he did nothing until some nine (9) months later, after the story began to receive intense media attention.*

Chief Defillo stated he did not take action because the coroner's office could not make a classification on the manner of death. In doing so, Chief Defillo may have been negligent in not going forward in this investigation when the cause of death had been alleged to him, when the perpetrator had been identified, and when it is in fact the responsibility of the homicide unit to investigate unclassified deaths, but making no further inquiry into the matter.

2. *Chief Defillo testified that he chose to personally monitor and supervise the investigation into the Glover death when he chose Sgt. Gerard Dugue to conduct the homicide investigation. He still did not have a cause of death, but finally allowed the investigation to proceed, under his direction. Despite his acknowledgement that he in fact was the sole supervisor of this investigation, Chief Defillo admitted he never once inquired as to the specifics of the investigation, nor monitored its progress. Chief Defillo testified that he did not ever require any written updates on the investigation to be completed or submitted to him.*

Chief Defillo may have been negligent in his duties by failing to require the submissions of reports or daily's, which are historically required in such investigations and by failing to otherwise monitor or supervise this investigation.

3. *Chief Defillo testified that he interviewed Captain Jeff Winn about his (Winn's) knowledge of this event in January or February of 2009. Chief Defillo stated that Captain Winn told him that the body that showed up at Habans school may have been shot by a police officer in the Fourth District. Chief Defillo also alleges Captain Winn told him he obtained that information from William Tanner, one of the persons detained when Glover's body arrived at the school.*

Captain Winn steadfastly denies that he ever talked to the detainees at the school, and that no one, and more specifically William Tanner, ever indicated to him that Glover may have been shot by the police. In support of this it should be noted that William Tanner has testified he did not know who or how Glover was shot. If Tanner's testimony is to be believed, there is no way Tanner could tell Captain Winn that which he did not know.

Additionally, if Chief Defillo was in possession of such information he would have certainly passed this information on to Sgt. Dugue in order to facilitate the investigation. Also, this would certainly be a question which Sgt. Dugue would pose to Captain Winn during his initial interview. Sgt. Dugue never asked such a question nor confronted Captain Winn with this omission.

If Chief Defillo's testimony is accurate, he may be guilty of negligence in his failure to inform his investigator of such a crucial fact, of failing to ensure this question was asked, or in failing to supervise and instruct a new interview to take place. A more likely scenario is Chief Defillo is mistaken in his testimony of that time. This is supported by a plain reading of his testimony, along with common sense application of the facts.

SUMMARIES OF INTERVIEWS

The following information was obtained by Captain William Davis, Major Murphy Paul and Ronnie Jones during a taped interview with ICE/HSI ASAC Roland Jones on April 5, 2011, at the Homeland Security office in Gulfport.

Agent Jones stated that he was the ASAC in New Orleans in June 2008. Jones stated that he had no specific recollection of the contact he had with Marlon Defillo in June of that same year regarding a pending news article or some type of media story alleging NOPD involvement in an incident which occurred in the days after Hurricane

Katrina. He stated that it was possible that he may have been asked to contact Chief Defillo by one of his agents if one of those agents asked that information needed to be relayed to NOPD. When asked if ICE Agent Reid may have provided him with information about a news story that was about to come out, he stated that it was possible. He is very familiar with Agent Robert Reid who is assigned to the New Orleans office, but again stated that he did not remember receiving any type of information from Agent Reid or any other person requesting or suggesting that Defillo be contacted.

Jones stated that if the investigative team learned of specific information which could be shared with him, that information might refresh his memory and allow him to recall or corroborate what he conveyed to Defillo. Agent Jones stated that he had no firsthand knowledge about the Glover shooting, the Habans School or the burnt vehicle and body found on the back side of the levee in 2005. He stated that he had no dealings with any reporter or knowledge of the articles published by any reporter regarding Henry Glover. Agent Jones went on to say that if he had contacted Chief Defillo it would have been strictly professional and the conversation would have been brief and to the point. It is very possible that somebody by the name of Reid contacted him and asked him to pass along information to Chief Defillo regarding a news article/publication, but he did not independently remember such a conversation with either Reid or Defillo. He stated that he has never been interviewed by any law enforcement agency in reference to the Henry Glover case.

Agent Jones stated that between March 1, 2011 and March 3, 2011, he received a phone call from ICE Agent Rod Baudy from the New Orleans HSI office. Agent Baudy informed Agent Jones that Chief Defillo was trying to contact him. Jones advised Baudy to have the Chief call him on his cell phone, but that he never heard from the Chief and has no idea why he was attempting to reach him.

The following information was obtained by Captain William Davis, Major Murphy Paul and Ronnie Jones during a taped interview with Chief Medical Investigator John Gagliano of the New Orleans Forensic Center on April 6, 2011, at the New Orleans Forensic Center in New Orleans.

Investigator Gagliano stated that after Katrina devastated the New Orleans area the coroner's office was temporarily relocated to the Disaster Mortuary Operational Response Team (DMORT) Center in St. Gabriel. This relocation allowed them to continue their work even while operating outside of their normal operational facility. Gagliano said that more than a thousand bodies were sent to the DMORT Center for examination.

Gagliano compared the DMORT processing of bodies to that of an assembly line. DMORT personnel would gather information about a corpse and the Incident

Commander of DMORT would determine if the death appeared to be suspicious or simply storm-related. If the death was deemed suspicious, the corpse would be sent to the pathologist from the New Orleans Forensic Center. It was their responsibility to complete all suspicious death autopsies for New Orleans. Those deaths that simply appeared to be from natural causes were worked by a pathologist assigned to DMORT.

According to Gagliano, no one contacted DMORT or the Coroner's Office seeking information on recovered bodies except for family members of casualties or NOPD Chief Defillo or Captain Joseph Waguespack.

While in St. Gabriel, sometime between September 2005 and March 2006, Gagliano *specifically* remembers receiving a call from Chief Defillo inquiring about a burned body that had been recovered in the Fourth District. Gagliano told Defillo that the autopsy had been performed, but no classification of manner of death had been made at that time. He informed Chief Defillo that the doctor stated there were no bullet wounds but a complete body had not been presented to the DMORT Center, only charred skeletal and torso remains. Gagliano added that they had very little information regarding the body prior to the autopsy.

Investigator Gagliano was very adamant that Chief Defillo called him while they were sharing space with DMORT in St. Gabriel just after the storm inquiring about the Glover remains. He stated that the coroner's office began moving back into their office in March 2006. Gagliano did not remember speaking to Chief Defillo about this case again until the federal investigation began in February 2009.

When asked, Gagliano defined the difference between unclassified and undetermined deaths in this way:

Unclassified – still pending investigation, waiting for more information to make a classification.

Undetermined – final determination, not enough information to make a final decision on specific cause of death.

In his statement to FBI agents (documented in a written record called an FBI 302), Gagliano stated that he had been contacted several times by NOPD Captain Joseph Waguespack regarding the status and/or classification of Glover's death. The FBI 302 reflects that he told Waguespack that the death was being classified as "accidental" and the cause of death was being classified as an "accidental fire fatality." When asked about the statement he made to the FBI, he told the investigative team that he did not actually have a classification at that time. He believes that his interim classification as "accidental" or "accidental fire fatality" may have been taken out of context or misunderstood. He explains that it was very possible that he told Waguespack that the

death could have been an accident, but he concedes that at the time it could have been anything including a homicide, a cover-up, or any number of things. The classification had not been made when Captain Waguespack made his inquiry, in 2005 or 2006, and which was a shortly after Chief Defillo had inquired about this body.

According to Gagliano, in his experience, NOPD usually would investigate the cause of death, even with this type of non-specific, open-ended classification. If there was something suspicious, the coroner's office would have worked with NOPD homicide investigators to determine the exact cause of death. After Katrina, communications with NOPD homicide investigators were admittedly limited. Gagliano added that the coroner's office was examining a number of bodies during that time that were obviously victims of a homicide, and while the death of Henry Glover was suspicious, it was not a priority.

Based on Gagliano's experience of over 40 years with the New Orleans Forensic Center, the level of suspicion surrounding the recovery of the Glover remains which had been taken from a burnt vehicle on the levees should have risen to the level of suspicion for NOPD investigators to pursue.

The final classification of death was made by Dr. Hunt from the Coroner's Office in October 11, 2010, as *undetermined*.

The following information was obtained by Captain William Davis, Major Murphy Paul and Ronnie Jones during a taped interview with HSI Special Agent Rod Baudy on April 6, 2011, at Benson Tower offices of State Police in New Orleans.

Agent Baudy stated that he was contacted by Chief Defillo a few weeks prior to the date of Baudy's interview, perhaps early March 2011. Defillo wanted to know a good contact number for ASAC Roland Jones. Baudy in turn contacted Agent Jones and informed him that Defillo wanted to speak with him, but did not know the nature of the call. Jones told Baudy to give Defillo Jones' cell number. Later that evening Baudy received a call from Jones advising Baudy that Defillo never called.

Either that same evening or the following day, Defillo called Baudy back and said that he had wanted to reach out to Jones to help refresh Jones' memory about the phone conversation the two had in June 2008. Baudy stated that Defillo later had second thoughts about the perception such contact between the two might generate and he decided not to contact Jones.

Defillo then went on to tell Baudy about the Hessler allegation, and although the chief did not go into specifics, Baudy believes that Defillo was just venting his frustration with the complaint and the investigation. Baudy stated he advised Defillo that it might

not be a good idea to make contact with anyone associated with the investigation, and further he recommended that Defillo inform investigators of any information and/or person that might be useful to the inquiry. He recalls that Chief Defillo agreed with him. Agent Baudy stated that he has no firsthand knowledge of the Henry Glover shooting, Habans School or the burnt vehicle and body.

The following information was obtained by Captain William Davis, Major Murphy Paul and Ronnie Jones during a taped interview with New Orleans Police Department, Captain Bruce Adams on April 8, 2011, at the Benson Tower offices of the State Police in New Orleans.

During the interview Captain Adams relayed the following information concerning his actions and his knowledge of Deputy Superintendent Defillo's actions during the Henry Glover incident.

Captain Adams stated he received a call from then Assistant Superintendent Marlon Defillo while he (Captain Adams) was at his office in the Public Integrity Bureau. Defillo advised Adams that he was sending over a man named William Tanner concerning a complaint.

Adams stated that Tanner later came to the PIB office to file a complaint concerning the seizure of his personal vehicle by NOPD officers in the days after Katrina. Tanner told Adams that he was driving in the Algiers area when a person was assisting a second person who appeared to be injured. Tanner's help was sought in taking the injured person to a medical facility. Tanner stated the injured person was placed in the Tanner vehicle and Tanner drove the injured party to Habans School to receive medical attention. Tanner stated he had previously seen an ambulance at Habans School and drove the injured party directly to that location assuming that medical assistance would be available.

Tanner stated when the three arrived at Habans School, a group of officers, who appeared to be SWAT members, pointed rifles, shotguns and handguns at them and ordered them away from the vehicle and the injured party. Tanner stated the officers handcuffed them, placed them on their knees and repeatedly beat them. At one point the officers were going to beat them again but were stopped by a white female officer who instructed the officers to stop. She instructed the officers to either take the two to jail or let them go. At this time, one of the officers retrieved some flares from a building, got inside Tanner's vehicle and drove away with the injured person still inside the vehicle. Tanner stated the injured person was lying in the back seat and he believed the injured person was still alive at the time he was driven away.

Tanner stated sometime later he was notified by someone (possibly a Corps of Engineer employee) that his burned vehicle was located in the area between the Mississippi River and the levee off Patterson near the Fourth District. Tanner showed Captain Adams a death certificate of the injured person (Glover) who was burned inside his vehicle, and advised that his vehicle was still in the same location where it was originally taken by NOPD near the school. Adams indicated he realized the severity of the allegations and asked Tanner to take him to the location of the vehicle. Adams and Tanner drove down Richland Street at its intersection with Patterson, drove over the levee and found the vehicle upside down and the doors marked with graffiti.

Captain Adams stated that he had previously never heard any information concerning Tanner's complaint prior to Tanner coming to the PID office to file an official complaint. Adams stated that even though he thought Tanner's story was bizarre, he thought it important to try to verify the account and he continued to question Tanner, asking specifically if there were any witnesses to the incident. Tanner stated, "Yes" and asked Adams if he had seen the documentary concerning the incident. Tanner told Adams that other witnesses had been interviewed in conjunction with the documentary and their names were readily available. Adams told Tanner that he had not seen the documentary.

Captain Adams stated they returned to the PIB office where he assigned PIB Sergeant Narcisse to begin documenting the Tanner complaint. Adams then placed a call back to Chief Defillo. Adams says he told Defillo that he was not sure, but thought they had a possible homicide and that officers from NOPD might well be involved. He asked Defillo if he could continue with the investigation since he had developed a rapport with Tanner but was told that it would be up to Superintendent Riley to make that decision. He told Defillo that he was going to call Chief Riley to request a meeting.

Captain Adams stated he contacted Superintendent Riley and requested a meeting to brief him on the complaint. Adams met with Defillo and Superintendent Riley and both were briefed on what Tanner had disclosed. Adams recalls that Riley and Defillo seemed puzzled by the allegations because no complaint of an incident of this magnitude had ever been kept this quiet. Adams requested permission to manage the investigation but Riley delegated responsibility for the initiation of a criminal homicide investigation to Defillo's command. Adams recommended that the vehicle be towed in immediately for evidentiary purposes, and that task was accomplished.

Captain Adams stated he notified the Federal Bureau of Investigation of the complaint and invited the FBI to join in the investigation. Adams directed Sergeant Narcisse to keep the investigation confidential because of the sensitivity of the allegations and said that he periodically spoke with Chief Defillo about the case during meetings.

Defillo later told Adams that the case had been assigned to Sergeant Dugue' as a criminal investigation and that the case was progressing.

During the meeting with Superintendent Riley and Chief Defillo, Captain Adams stated it was his understanding that Defillo was to conduct a full scale homicide investigation and not just an inquiry. Adams stated that during the meeting there was no indication that anyone present had prior knowledge of this incident. Captain Adams stated there were no indications, no facial expressions, no gestures, and no signs that anyone in the room knew anything about Henry Glover's death or Tanner's car.

Captain Adams was asked, as a career police officer and an investigator, what he would have done if a federal agent had contacted him and told him what Agent Jones had told Chief Defillo. Specifically, did he think he had an obligation to do something with the information, and Adams replied, "Absolutely, without a doubt, even outside my authority as the Chief of Internal Affairs, I would have made sure something was done with the information".

Captain Adams indicated he had previous homicide investigation experience but that PIB was "kept on the back seat" during homicide investigations. He had made a recommendation to Superintendent Riley to allow a section within PIB to handle police shootings and other investigations of a serious nature and that Riley had taken his recommendation under consideration.

Captain Adams was asked if it was normal during a criminal investigation for an investigator to compel statements from officers who might be complicit in the criminal act or might be targets of the investigation. He said that would not be a normal operating procedure. When asked if he thought it strange that Sergeant Dugue' did just that during the course of the Glover investigation, Adams replied that he could not imagine why Dugue' would take a compelled statement during a criminal investigation.

Captain Adams stated he requested to be involved in the Glover investigation but was told that because the investigation was criminal in nature rather than administrative, that it would be handled like other police shooting inquiries. Adams stated he had no further involvement in the case other than assisting the FBI with their investigation. He does recall instructing Dugue' to seize and store the Tanner vehicle, which Dugue' subsequently did.

Captain Adams stated that PID did not investigate the incident further. Once the homicide investigation began, according to their policy, the criminal investigation would have to be completed before the administrative investigation would be initiated. Adams stated he had the DI-1 completed to document the complaint and to protect him and the police department.

Based on his experience as an investigator, Captain Adams was asked, hypothetically, if the remains of a body were found and the Coroner's Office had not classified the death, would this prevent the department from initiating an investigation. He indicated that regardless of the classification, there would need to be documentation and paperwork. He added that witnesses would have to be identified and evidence gathered to help in determining if the matter were a homicide. He noted that there is considerable work to be done by investigators even if the death is ruled as unclassified.

The following information was obtained by Captain William Davis, Major Murphy Paul and Ronnie Jones during a taped interview with HSI Special Agent Robert Reid on April 13, 2011, at the Benson Tower offices of the State Police in New Orleans.

S/A Reid stated that prior to Katrina he was assigned to the DEA HIDTA group and immediately after the storm was assigned to the NOPD 8th District in the French Quarter. He was later re-assigned to the Fourth District in Algiers, and in January 2006 he was assigned to Plaquemines Parish.

S/A Reid stated he first learned of the Henry Glover incident while assigned to the Fourth District. Reid stated he, an HSI S/A named Bill and HSI S/A John Schmidt responded to a complaint at a residence and that Reid spoke with the complainant, William Tanner. During the interview Tanner stated that in the days after Katrina he picked up an individual who had been shot and drove the individual to a school where NOPD officers were staged in an attempt to get help for the injured person. Tanner informed Reid that when they arrived, he was pulled from the vehicle by NOPD officers and was hit by the officers and was treated like a crook. Tanner stated the officers never provided aid to the injured person. He saw NOPD officers drive his vehicle away with the injured party still inside. Tanner and the other passenger who had flagged down Tanner in an attempt to get transportation and aid for the injured person were later released.

S/A Reid stated Tanner wanted to file a stolen vehicle report concerning the incident. Reid noted that when he initially arrived at the Tanner residence he was greeted by a uniformed NOPD Officer who was already there. The unidentified uniformed officer told Reid that Tanner was "crazy" and not to listen to Tanner's complaint since he was a "known thief." Reid stated the officer was a black male, approximately 5'10" to 6" tall who always wore a NOPD ball cap, but he did not remember the officer's name. During the interview, S/A Reid stated that Mr. Tanner said he had been unsuccessful in having NOPD address his complaint. S/A Reid advised Mr. Tanner to contact the FBI.

After speaking with Tanner, S/A Reid stated he forwarded the information through the ICE Command Center to the supervisor, Scott Illing. Reid stated that he and John Schmidt also informed a state trooper of the complaint and later informed supervisors at the Fourth District of Tanner's allegations. Reid stated that approximately a week to a week and a half later he received a call from Mr. Tanner advising Reid that someone found his vehicle between the levee and the river in the Fourth District. S/A Reid stated he located the vehicle and confirmed it was Tanner's missing vehicle and later conveyed this information to Tanner.

In 2008, S/A Reid stated he was contacted by a California journalist requesting an interview concerning Mr. Tanner's complaint. The journalist was referred to HIS headquarters and the interview was never approved. Reid stated he never spoke with NOPD Deputy Superintendent Marlon Defillo concerning the journalist's interest in the matter or the pending article.

S/A Reid stated that a couple of weeks prior to this interview, he was approached by HSI S/A Baudy concerning Deputy Superintendent Marlon Defillo. S/A Reid stated S/A Baudy informed him that Deputy Superintendent Defillo was his neighbor and he (Defillo) was inquiring about Reid. S/A Reid stated that Baudy mentioned there was an on-going administrative investigation of Defillo by State Police and Defillo wanted to know what type of guy S/A Reid was. S/A Reid stated there was no attempt to persuade him to do or say anything. He believed it was just an officer calling another officer about a complaint coming through the chain.

The following information was obtained by Captain William Davis, Major Murphy Paul and Ronnie Jones during a taped interview with HSI Public Affairs employee, Temple Black on April 13, 2011, at the Benson Tower offices of State Police New Orleans.

In the summer of 2008 Mr. Black learned from HSI Agent Robert Reid that reporter A.C. Thompson was inquiring about information dealing with the Henry Glover case. Agent Reid provided Mr. Thompson with a number to the Homeland Security Public Affairs office. Mr. Black recalled that he had been contacted by Mr. Thompson two or three times in 2008, but Black was unable to assist Mr. Thompson with any information, and Thompson was referred to Marlon Defillo and NOPD Public Affairs.

The following information was obtained by Captain William Davis, Major Murphy Paul and Ronnie Jones during a taped interview with New Orleans Police Department, Deputy Chief Marlon Defillo on April 14, 2011, at the Benson Tower offices of State Police New Orleans. (This interview has been transcribed and can be found in its entirety behind Tab 15.)

Chief Defillo stated that he was the Commander of Public Affairs in September 2005, and was primarily responsible for coordinating the release of information to the news media in the days and weeks after Katrina. While maintaining his PIO duties, he told investigators that he was operationally tethered to Superintendent Edwin Compass continually after the storm and until Compass stepped down. Because of poor communications NOPD Commanders would meet frequently to discuss operations and share information with other command officers. Until Compass stepped down in September 2005, Defillo said that he and the chief were both at these briefings. When Chief Riley took over, Defillo said there was some change in the nature of his assignment and proximity to the new chief, and Defillo thereafter did not attend all of the command briefings as before. He stated that at no time during any of the briefings was he ever made aware of an officer involved shooting (by Officer David Warren), or the events which followed at Habans School, or of a vehicle containing a body being commandeered by NOPD officers and set on fire behind the levee in the Fourth District.

Chief Defillo stated that he recalled being contacted in June 2008 by ICE Agent Roland Jones. Agent Jones relayed that a national magazine or publication was going to produce a "scathing" story on the Police Department and how it handled the response to Katrina. Most damning would be allegations that the charred remains of a body found in a burned vehicle in the Fourth District were actually the remains of a man who had been shot by NOPD officers in the days after Katrina. The report would also allege that the victim of the shooting and a vehicle had subsequently been set on fire by NOPD officers working out of the Habans school complex.

As a result of that call Defillo contacted Chief Medical Investigator John Gagliano with the Orleans Parish Coroner's Office. Defillo stated he was told that a body had in fact been recovered from a burned vehicle in the Fourth District. Defillo said he specifically recalls that when questioned about the manner of death Gagliano told him "we don't know how he died." Defillo stated that the Coroner's Office only had a tentative name of the deceased and that DNA testing was going to be conducted to confirm the individual's identity. Defillo told investigators that he advised Gagliano to continue their investigation, and when they (the Coroner's Office) finally determine the cause of death to let NOPD know. At the time of Defillo's call to Gagliano in June 2008, the death was "unclassified."

In defense of his actions Chief Defillo stated that his "respect for the news and what they were at that time, I was kind of leery (about the legitimacy of the story). I said, you know, they were really wild with stories back three years earlier. Let the Coroner's Office do their investigation I'm thinking about your body with flesh and organs, and I have been on hundreds of burned bodies. I mean, I taught criminal investigation in school, so I have been to a number of autopsies, and we were always able to determine cause of death. So, when they said shot, well, if he is shot, we've got to have - - you have to have a projectile found - - and again, we didn't find any bullets, we didn't find any projectile, we didn't find any casings. We don't know how he died. So, given all of the things I just mentioned to you, I said, well, John, the most prudent thing to do and the most responsible thing to do from my end is allow you to do your investigation and to report back to me your findings."

When asked if he ever notified anyone in his chain-of-command (Chief Riley) of what he learned from Agent Jones or John Gagliano, he replied "I don't believe I told Riley." He stated, knowing what he knows now, "I think as a courtesy. I mean, just to say, look, Chief, I got a call from an agent who said that this guy may - - the body was burned - - was found burned and may be involved - - shot by the police."

Defillo stated that the information received from Agent Jones was "very vague information, and that is why I - - that is what made him rely on the Coroner's Office because I knew - - I knew three years ago, how the media was three years ago, and how they reported such erroneous stories, and with the vague information that was given to me by Jones - - and that was how I developed my disposition."

Defillo was asked if he ever attempted to validate the information that he received from Gagliano about where the body was recovered from. Defillo replied, "He told me, but he didn't say where. He told me - - no, he did. He said it was on Patterson. They picked the body up on September 16, 2005, and took him back to Gonzales, because there was a makeshift morgue there. Now - - because we had several agencies that were working in Algiers at the time of Katrina, so I didn't pursue it at that point, because, again, I was waiting on him to classify the death." In referring back to the situation in the city immediately after the storm, Defillo stated "So, I did not want to jump to conclusions, and that was why - - that was my mindset at the time is let the Coroner's Office do their job and then report back to me so we can make an intelligent decision on what we should do."

When asked by investigators, "And you have the information from the federal agent and then John Gagliano, at any time did you check to see if the vehicle was still behind the levee?" He responded, "I didn't know where, that was the - - I didn't know where. I didn't - - you know, I didn't know where - - I didn't know exactly where he was." He stated that Patterson Street is a long street; it stretches from Canal Street to the

Chalmette Ferry. Upon further questioning he conceded that he never directed anyone else to check the area for the vehicle, nor did he seek the documents from the Coroner's Office which would have indicated the specific location where the vehicle and body had been found.

In the interview with investigators he did not recall making any inquiries into any type of NOPD reports relating to the vehicle or a body after receiving the call from Agent Jones in June 2008.

He was asked, "Have you had any firsthand experience on homicide investigations?" To which Defillo responded, "I have not done adult-type homicides that were not - - that were stranger-related, no. Most of my homicides were experiences that dealt with children and so forth." He admitted that he had a basic understanding of criminal investigations, and he reiterated that he believed that his approach to how he handled the information provided by Agent Jones was reasonable.

Defillo was asked, "With basic criminal investigation knowledge, shouldn't you have done something with this information?" And he replied, "I keep going back to what I mentioned earlier, in terms of the classification and all of those other factors that played into my thinking at the time, and also the fact that, you know, my Homicide Unit were handling - - they were handling hundreds of cases, and I am thinking, well, I don't want to tie up a homicide team or homicide investigator on this right now. I mean, they are working a number of shootings and a number of homicides, so I - - I'm trying to utilize my resources as best I can, so..."

Investigators asked Chief Defillo, "... You say that you wanted to let the Coroner's Office do their job and complete their job, then you would determine if the Department needed to intervene and do an investigation, and if that official autopsy report wasn't completed until 2010, an official NOPD investigation began 2009, why would you have started that investigation before the official classification came out?" His response was, "New information. I have a real person, a person who was there on the scene, to give me specific information about what transpired, that now I have got something to address, now I can put people involved, location involved, a timeframe, and specific sequence of events that occurred that led up to the death of Mr. Glover."

When asked about the forthcoming news report that he was told about by Agent Jones, he stated he tried to locate this so-called article. Even today he asserts that he has not seen it. Although he was the Deputy Superintendent in June 2008, Defillo admitted that he did not attempt to validate or correct any information that was going to be published or aired. Even though he was the former Commander of Public Affairs and spokesperson for the agency for numerous years, he saw no urgency to make contact with the reporter(s) or have anyone from the Public Affairs Unit seek out the reporter or

monitor the story's publication. He stated, "Again, I was on the internet looking for this - - and I never heard of a national magazine or - - and I am looking for it. I am looking for it. I am trying to find this story, and I didn't find it, and I don't know if it ever ran. I don't know."

When told that the story first appeared on the internet, later in a printed article and later as a PBS documentary in late 2008 and into 2009, Defillo said, "I am not saying it didn't run. I am saying that I couldn't find it. It may have run, but again, you know, I have so many other responsibilities, I - - I didn't have enough time to dedicate to look at every internet report or looking through the TV Guide to find out when this is going to air, so it was done as best I could with the resources I had. So it doesn't surprise me, no." When asked, "Why wasn't the Public Affairs Unit assigned or requested to monitor such a potentially scathing story, or call the reporter and find out what this is all about? Why not delegate the task of looking at the allegations that were going to come out to either discredit them before they were aired or printed or to get some further information on which you could perhaps have someone pursue it? He replied, "I think, you know, hindsight probably, hindsight, I didn't do it."

Chief Defillo stated that he was contacted by William Tanner in January 2009. After learning of his complaint, Defillo referred him to then-Deputy Chief Bruce Adams who was commander of the Public Integrity Bureau. After a couple of hours, Chief Adams contacted Defillo and informed him that this complaint appeared to be much more serious than what was originally thought. Both Adams and Defillo later met with Chief Riley and jointly briefed him on the information learned from Mr. Tanner.

That same day Chief Defillo contacted Captain Jeff Winn because Winn had been stationed at Habans School right after the storm. He learned from Captain Winn that several days after Katrina a vehicle with a shooting victim in the back seat had been brought into the Habans School parking area, and because the person in the back seat was dead, Winn ordered officers to drive the car with the body inside to the back side of the levee. He did not want a decaying body left in the school area where his officers were living.

After talking to Winn, Defillo called Captain David Kirsch, who was the commander of Fourth District in September 2005. According to Defillo, Kirsch confirmed what he had been told by Winn. Kirsch also told Defillo that the person who had been shot was actually shot by NOPD Officer David Warren. Kirsch informed Defillo that Captain Waguespack, who was in Internal Affairs in September 2005 had "gone out" during that time. Captain Waguespack confirmed that he knew about the shooting and had actually gone looking for the body for the family, but that he never documented anything he did.

Chief Defillo stated that he then contacted Lieutenant Robert Italiano, a day or two later and confirmed what he had been told by the three previous commanders. Chief Defillo stated, "After all these meetings we had during - - COMPSTAT meetings for three years and we did all these other investigations, you guys sat in the same room with us at meetings, and no one ever brought this information up for three years. And I told them that we were going to launch an investigation, and that they were going to be contacted by my case investigator who I assigned as - - Sergeant Gerard Dugue as the case investigator. So I said, let me do a little preliminary now. I've got some names now. I've got a guy who came in and filed a complaint, so let me just do - - before I assign it to an investigator."

Chief Defillo was asked why he felt the need to validate Mr. Tanner's information, which may have potentially jeopardized a criminal or PIB investigation, even after Deputy Chief Adams had spoken and interviewed Tanner. He responded, "You know, I could have given it to a - - I could have immediately turned it over to Homicide to start investigating, but I think, as a Chief of Detectives, I wanted to validate it, and that is as best I can say it, you know." He stated that the four people he contacted, Captain Winn, Captain Kirsch, Captain Waguespack and Lieutenant Italiano, were not the subjects of an investigation, so he did not feel that contacting them was inappropriate. He felt that what he did was responsible and reasonable based on his position.

After his meeting with Chief Riley and Captain Adams, he assigned Sergeant Gerard Dugue' to handle the criminal investigation. He stated that Chief Adams notified the Department of Justice of the allegations, which would have been a normal practice for the Department. He added DOJ became involved a couple of weeks later.

Sergeant Dugue' was given a list of people to start interviewing. Chief Defillo said, "I felt it was important that the police department would do some sort of a probe in terms of what transpired three years ago - - or three-and-half years ago now." He stated he gave him a list of people to speak with as well as the ranking officers in the Fourth District. "I wanted him to start an investigation into a possible police shooting that happened... And so I gave him some marching orders and to keep me briefed on the investigation, and so he began the investigation. He was the lone investigator. And so he was to answer directly to me and not to Captain Gremillion." Chief Defillo stated that he gave Sergeant Dugue' instructions to keep him briefed on all information gathered during this investigation, and Dugue' was working *a criminal investigation*. He stated that Dugue's objective was to try and find out how this person was shot by the police, and so that was his mission. At this time, January 2009, Chief Defillo stated he was the Deputy Superintendent but he also oversaw the agency's criminal investigations.

When asked why he would have directed Sergeant Dugue' to report directly to him he answered, "I felt at that time it was the best way to handle this investigation, that

Sergeant Dugue' would answer to me, because we are talking about a police shooting situation, and I thought that was the appropriate thing to do." He was asked if he had ever taken other members out of the chain-of-command to report directly to him with any other type of criminal investigation, and he replied that he had never done that before. He stated that he received updates from Sergeant Dugue', maybe once a week. Dugue' would verbally brief him on what he was doing.

Chief Defillo was specifically asked if he authorized Sergeant Dugue' to compel statements from members of NOPD during the course of this investigation. He stated that it would have been improper for Dugue' to compel any statement because this was a criminal investigation. He understood that a compelled statement would be protected by *Garrity* Rights given during the course of an administrative investigation, and any such information developed or offered as a result of being compelled could not independently be used in a criminal investigation.

Chief Defillo stated the criminal investigation assigned to Sergeant Dugue' was never completed. After the FBI seized computers, notes, and files Defillo decided they were not going to do "competing investigations." He was unable to say if NOPD would ever complete their criminal investigation now that the federal inquiry has been concluded.

Chief Defillo advised that when he took over PIB in December 2005, he was never briefed on any information involving the Officer Warren shooting in the Fourth District, the events that followed at Habans School, or the vehicle and dead body. He stated Captain Waguespack was in PIB at that time and never mentioned this to him.

Concerning the recovery of the body, Chief Defillo agreed that the DMORT teams assigned to recover bodies would have had a specific location to recover the body. He stated that he only knew of the Patterson Street location and had no cross street.

He specifically remembered John Gagliano telling him that they only had a tentative name. When asked if he remembered speaking to John Gagliano between September 2005 and March 2006, about this body, his response was, "We were dealing with so many bodies. I would be surprised as far - - about the circumstances, I would be surprised - - we were dealing with so many bodies. I mean, I can't tell you that, whether I did or not, you know. We're talking about police shootings; we're talking about bodies that were found all over the city. So I would be surprised if I had specific information about a person being shot by the police, put in the car, car set on fire, I would be completely surprised about that."

Q. And I guess that is what I was trying to figure the time here, Marlon, because assuming that you called about Glover's body ('05/'06), just made an inquiry or

called into St. Gabriel, he (Gagliano) would not (have) known at that time the identity (of Glover).

A. Well no, I learned the tentative name was in '08, that was the time that I - -

Q. But what I am saying is, he didn't know, had you called him in St. Gabriel, because the body was identified in April of '06, and the remains were turned over to the mortuary three days later. So, when you talked to him in '08, he absolutely knew who the body was.

A. uh-huh

Chief Defillo was asked if he had spoken to anyone about the on-going administrative investigation since being notified, and he told investigators that he had made contact with a friend from ICE and former NOPD officer Rod Baudy in February 2011. Defillo said he wanted to provide a telephone number for Agent Roland Jones, to LSP investigators. Baudy located and supplied a contact number for Agent Jones to Defillo, but Defillo decided not to contact Jones. Neither did Defillo supply the telephone number he allegedly acquired to assist the investigation to LSP investigators.

Chief Defillo concluded his interview by stating that he never linked the conversation with Agent Jones and the pending media report with William Tanner's complaint.

CONCLUSION

The allegations by Mr. Hessler will be addressed in the order that Hessler presented them in his complaint. (Tab 2)

1. *Chief Defillo testified under oath that in June of 2008 a federal agent told him of the allegation that Henry Glover had been shot by the police, and his body burned behind the levee. Chief Defillo confirmed a body had been burned in this location, but learned that the cause of death could not be determined due to the condition of the body. By his own sworn testimony, Chief Defillo admitted he did nothing until some nine (9) months later, after the story began to receive intense media attention.*

In determining whether Chief Defillo's conduct as described in this allegation amounted to misconduct we must review what Defillo knew about the Glover incident, when he knew it and how he responded to the information that was made available to him. Let's start with the timing issue. We know that *at a minimum* Defillo was made aware of a possible police shooting in June of 2008.

In Chief Defillo's federal trial testimony, when questioned by Ms. Knight we have this exchange:

Q. Did you receive a call from anyone in 2008?

A. I received a call from Roland Jones, who was the assistant special agent in charge of the Immigration Custom Enforcement agency, and that was in June of 2008.

Q. And what did you learn from assistant Special Agent in Charge Jones?

A. He had reported that there was going to be a scathing news report coming out by a national magazine, national publication that was very critical of the New Orleans Police Department during Katrina. He went on to say that there was an individual who may have been shot by police and his body was found burned. (Tab 11, page 7, lines 7-19)

That testimony is supported by what he told LSP investigators as well as what he told FBI agents in November 2009. He added in his statement to the FBI that the incident occurred in Algiers where the Fourth District is located and that the reporter's name was A. C. Thompson. So we know as a matter of fact that at least by June 2008, Chief Defillo had been provided with information sufficient for him to make at least a cursory inquiry into a possible police shooting.

Although it cannot be proven, information offered by Investigator John Gagliano suggests that Defillo may have been aware of a shooting victim and burned body as early as the winter of 2005 or the spring of 2006. According to Gagliano, Defillo *did not call* about Henry Glover in June 2008 but had actually called much earlier. Gagliano is confident of his conversation with Defillo about Glover in 2005 or 2006 because Gagliano says the coroner's operation was still in St. Gabriel at the time of the call, and he specifically remembers that Defillo called him while the Coroner's Office was operating at the remote location. Gagliano says the coroner's operations returned to the city in March 2006. Defillo has no recollection of an earlier phone conversation with Gagliano regarding Henry Glover, although Defillo never explicitly denied the earlier timing of the conversation. He asserted over and over again that he would be surprised if Gagliano's timeline were correct. (Tab 12, page 62, line 7, through page 67, line 1)

Compounding the question of when Defillo knew about a police shooting is the issue of the identity of the body. Defillo would seem to confirm the earlier timing of his phone call by his assertion to LSP investigators that when he talked to Gagliano about the burned body, he was told that there was no confirmed identification of the body. He also noted that at the time of the call Gagliano explained that no cause of death had been determined by the coroner and that their office was going to "do a toxicology or some other types of pathology work" (Tab 12, page 15, lines 3-4)

That is perplexing. Had Defillo actually called in 2008 rather than 2005/2006 the identity of the body would have been well established. Glover's remains had been *conclusively* identified by DNA on April 24, 2006 and the body returned to the family for interment three days later. Moreover, there is no evidence suggesting that toxicology or pathology work was pending in 2008 when Defillo says he called. Thus only a call to Gagliano *before* that date would have yielded an inconclusive identification of the remains and a discussion of pending forensics tests. Therefore Defillo's assertion that the identity of the body had not been confirmed when he called in 2008 or that tests were pending would have to be false. Either Defillo has an incredibly poor memory or he has been deceptive. (It should be noted that his statement to LSP investigators is at odds with his federal court testimony to the extent that in court he testified that after the call from Jones he was provided with Glover's name by the coroner's office. [Tab 11, page 18, lines 11-15])

A finding that Chief Defillo knew about a possible police shooting and a burned body in 2005 or 2006 would necessarily complicate and compound any culpability on his part for failure to act. But because of the contradictory statements and divergent recall of details by both Defillo and Gagliano, it will be assumed for the purposes of this investigation that Defillo had been conclusively advised of a possible police shooting at least by June 2008. That is known as a matter of fact and is otherwise not contradicted by Defillo.

What did Defillo know in June of 2008? Based on a composite summary of Defillo's statement to the FBI (FBI 302 dated November 17, 2009), his federal court testimony (page 7, lines 10-20) and his interview with State Police investigators (Tab 12, page 13 lines 4-11) he asserts that he was provided the following paraphrased information by ICE ASAC Roland Jones: A reporter by the name of A. C. Thompson was preparing to either publish or air a "scathing" media report alleging that NOPD officers shot an individual in the Fourth District in the days after Katrina and the victim's charred remains were later found in a burned car also in the Fourth District. (*Scathing* is a description used more than once by Defillo in characterizing the anticipated nature of the news story.)

This was information conveyed to the second highest ranking officer within the Police Department, the chief of investigations, a former Public Information Officer, and a former head of the Public Integrity Bureau. Based on Chief Defillo's assignment at the time and the 32 previous years of experience in sensitive and critical positions, the information relayed to him by Jones should have generated more than just casual curiosity. Indeed, the information alleged not that just an unresolved homicide had taken place but it alleged a homicide seemingly involving officers from the New Orleans Police Department.

The next issue that must be addressed is to evaluate what Defillo did with the information that was provided by Agent Jones.

After speaking with Jones, Defillo called Investigator Gagliano at the Coroner's Office and asked if the remains of a burned body had been recovered in 2005 from a vehicle which had also been burned and was located in the Fourth District. Gagliano confirmed the existence of such a body and told Defillo that the cause of death had not yet been classified. According to Defillo's statement to investigators, Gagliano said, "... we don't know how he died. He could have died from an overdose. He could have died from natural causes." (Tab 12, page 14, lines 13-14) However, it is important to note that there is no evidence in the record suggesting that Gagliano *ruled out* homicide as a cause of death. Absent such a rendering, an experienced and trained investigator must assume that it could have been a homicide.

The fact that the coroner's office had not classified the death seemed to be sufficient for Defillo to drop any further inquiries and wait on the Coroner's Office "to do their work." He offers several explanations for his failure to follow up on the information provided. One of those explanations was the lack of a specific policy which would have required investigation of an unclassified death. During his interview with LSP investigators he explained:

"I truly believe my actions were reasonable, and there -- even today, there is no departmental policy that mandates that we do (an investigation) -- there is one section of the policy that says that if it is a real-time investigation on unclassified deaths, that the District DIU or District Investigating Unit will assist the Coroner's Office in the removal of the body and those type of things, but that is real-time investigations, that is the only thing that is in black and white that is in the department on that" (Tab 12, page 30, lines 5-13)

When questioned again, Defillo reiterated his understanding of the policy. "There is no policy on responding to unclassified deaths that are dated" (Tab 12, page 71, lines 17-18)

The fact that there is no specific agency policy compelling an investigation for unclassified deaths would seem to be an insufficient reason to ignore looking into allegations of a possible police shooting. It is conceded that the policy appears to be imprecise. But policies generally do not address each and every anticipated situation or circumstance. It should be noted that the same policy cited by Defillo *does not prohibit* investigations of unclassified deaths either.

Seasoned and reasonable judgment must be substituted when policies leave some issues unresolved. A conscientious and effective police investigator is inherently

inquisitive and suspicious; it's the nature of the work. Were they not so oriented, few investigations would be pursued. Even fewer crimes would be solved. One would expect nothing less from Defillo, the person charged with supervising all investigations in a large, urban police department. There are two basic "dots" to connect at this point—allegations from a federal agent of a possible police shooting and confirmation that the remains of a burned body were found in a burned car in the same area by a DMORT team and were subsequently turned over to the coroner.

Yet Defillo repeatedly failed to acknowledge that the circumstances as presented to him were sufficiently suspicious as to require follow up. He never directly answered the question, "Do you think that rises to the level of suspicion, as a law enforcement officer (that would require investigation)?" He demurred, suggesting each time that his Katrina experience guided his decision not to do anything else with the information. He believed then, as he does now, that doing nothing more was a reasonable course of action.

That rationalization by Defillo was based on his assessment of the circumstances as related to him by Agent Jones. He considered them "bizarre." Defillo repeatedly harkened back to the erroneous reporting that had occurred in the weeks after Katrina. He cited false stories and outright incorrect facts reported over and over again by the media. He surmised that perhaps this was just another one of those wild post-Katrina reports.

Chief Defillo believed that the information passed along by the ICE agent about a reporter's forthcoming investigative story detailing a police shooting and burned body did not seem credible based on his Katrina experiences. However, Defillo's conversation with Jones occurred in the summer 2008, nearly three years after the hurricane made landfall. This was not September 2005, not the post-apocalyptic landscape of city in ruins. New Orleans city government and the police department had returned to a near normal state of operations. The emergency had passed and so too had the weight of a rumor mongering press. The use of a "Katrina misinformation" template in evaluating the legitimacy of a pending news story in 2008 regarding an issue as potentially sensitive as an uninvestigated police shooting and burned body is simply an inadequate and implausible explanation for the second in command of NOPD.

Another explanation offered by Defillo in defense of his actions was the absence of an official determination of manner of death. Defillo went to great lengths to justify his actions because it was the coroner's responsibility to establish a cause of death. "Let the Coroner's Office classify this thing, because by state statute, it is their job to classify it, not me" Based on that rationale and Defillo's reluctance as chief of investigations to provide any investigative inertia, it would have to be assumed that had William Tanner not shown up seeking compensation for his commandeered vehicle in

February 2009 the NOPD would never have investigated Henry Glover's death. One could speculate that the burned car might still be there today.

It is a specious position to argue that because the coroner had not ruled on the manner of death that police just ignore what is known and wait for a call from the coroner. That's precisely Defillo's position and that's exactly what he did—nothing. And it should be noted that the information passed along to Defillo by Jones did not suggest a forthcoming news story on just a "garden variety" homicide. The story as described to Defillo would allege a police-involved homicide. One cannot imagine a more serious allegation—that police officers perhaps shot an individual and the body subsequently turned up as charred remains in the back of a burned vehicle. If nothing else, one would think that a person at Defillo's rank and level of responsibility would want to work diligently to dispute the allegations and absolve the agency from such malicious allegations.

Yet another explanation for his lack of follow up was Defillo's belief that there was a paucity of detail or information on which to base an inquiry. In view of the facts, that is an almost outrageous position. Throughout Defillo's interview with investigators and in his court testimony he attempted to buttress his defense of inaction:

- "So, when they said shot, well if he is shot, we've got to have -- you have to have a projectile found -- and again, we didn't find any bullets, we didn't find any projectile, we didn't find any casings." (Tab 12, page 16, lines 20-23)
- "And that is what drew my conclusion, well, may have been shot by the police, maybe there is a bullet, maybe there is a projectile, maybe there is an entrance wound, because again we're talking about a body. He never mentioned bones" (Tab 12, page 20, lines 1-5)
- ". . . there was very limited information as to the parties involved. I did not know the name of any officers who were involved, did not know what district who may have been involved or what unit was involved." (Tab 11, page 17, line 24-25 through page 18, lines 1-2)
- "Very limited information. All I had was the name of the deceased, and no other information in terms of who may have been involved, any witnesses, an exact location, all of those other variables that I did not have in my possession at that time." (Tab 11, page 18, lines 12-15)
- "Very vague information." (Tab 12, page 19, line 21)

Despite his assertions to the contrary, there was an abundance of information available, and Defillo had a number of options with regard to the allegations conveyed by Jones. First of all he had the name of the victim, Henry Glover. By June 2006 the

identity of Glover had been well established despite Defillo's contradictory and vacillating recollections that there was no confirmed identity. The Coroner's Office had Glover's name and the names and contact information for Glover's next of kin. Defillo apparently did not see fit to ask for the next of kin information. Why not contact the family to find out what they might know of Glover's death? That would seem to be an incredibly basic and elementary investigative step—call the family and ask what happened. Had he done so Defillo would have learned that Glover was likely the victim of a police shooting and his body was later burned by officers from NOPD.

With the identity of the victim in hand, alternatively Defillo could have run Glover's name through the National Crime Information Center (NCIC) database or searched NOPD's records for any information on Glover. An audit of the NCIC database shows no law enforcement inquiries on Henry Glover until February 11, 2009 when the Department of Justice queried the files. Moreover it has been established that Glover's name was in NCIC because on November 16, 2005, a missing persons report was filed on Glover by Edna Glover (NOPD item #K-07665-05, Missing Persons Report, Tab 5). The NCIC Missing Person entry was cleared by NOPD on February 8, 2010. (Tab 14) Yet Defillo either did not look for the internal report or could not find it depending on which version of his testimony is deemed credible.

When he was asked by LSP investigators whether he had searched for any NOPD records related to Glover he responded, "I don't believe I did. I won't swear by it, but I don't believe I did." (Tab 12, page 28, lines 4-5) Although the Grand Jury testimony of Defillo was not made available to the investigators, based on the trial transcript of Defillo it is known that he told the Grand Jury in January of 2010 that he had looked for police reports related to Glover in summer of 2008. (Tab 11, page 26, lines 7-19) Under cross examination by Mr. Lemoine during the federal trial, the following exchange occurs:

- Q. Now, you described before looking for a police report in August of '08 - - or I'm sorry, summer of '08, when you got the call from the ICE person. And not being able to find it. You know now that there was a police report written in this matter in December of '05, right?
- A. I know now, yes. (Tab 11, page 26, lines 14-19)

Had Defillo been diligent in his pursuit of records within the agency he may have also have found a report filed by Sergeant Purnella Simmons (NOPD item #L-01447-05 dated December 12, 2005) regarding the discharge of a firearm by Officer David Warren at 3751 General DeGaulle in the Fourth District. (Tab 6) Once again, he found no reports although he concedes during the course of the federal trial that there were indeed reports on file at NOPD related to Glover and they were located where they were supposed to be located. His search either did not happen or it was anemic in effort.

Even if he chose to ignore the identity of Glover and the leads that would emerge from asking a few questions, Defillo could have taken another course of action. He knew from the call from Jones and the discussion with Gagliano that the remains had been found in a car somewhere along Patterson Street in the Fourth District. He defended not sending someone out to the scene on the outside chance that the car might still be there because he said he had only a vague location. "Patterson stretches from . . . Canal Street all the way to the Chalmette Ferry. I mean, that is a lot of ground to cover. I could have sent somebody out there, I could. It is just a lot of ground to cover." (Tab 12, page 27, lines 7-11)

Defillo should have known that the DMORT team had documented the precise location where the remains of each casualty were recovered in the city. Since the DMORT operation was conducted on behalf of the state's response to the disaster, all DMORT documents and files were deposited with the Louisiana Department of Health and Hospitals after the recovery operations had ended. So even if the Orleans Parish Coroner did not have a copy of Glover's DMORT recovery report, a simple call to the Louisiana DHH would have revealed a copy of the report dated September 16, 2005. (Tab 12). That report notes that the "charred remains" had been recovered at the intersection of Patterson and Collins. It is no coincidence that the intersection of Patterson and Collins is at the Mississippi River levee near the Habans school.

Had Defillo simply requested the report he would have had a very specific location, and a quick visit to the site would have revealed William Tanner's car turned upside down behind the levee. In June of 2008, some three years after Katrina the car was still sitting where it had been torched by NOPD officers. Once located, the VIN of the car would have led Defillo to William Tanner, and Tanner would have disclosed what he knew about Glover's death.

As if finding the burned shell of a car was not enough validation to launch an investigation, had Defillo taken the time to locate the DMORT report he would also have read the comments on the last page of the report, "Remains were received in multiple plastic bags, severely fragmented remains, charred remains, intermixed with metal debris Upon obtaining radiographs, coroner's pathologists took remains to '*remove bullet*' prior to photographic documentation." Although John Gagliano was dismissive of the work of the DMORT team and its observation/notation of a bullet, a casual reading of the form would have alerted a trained police officer to the emerging possibility of a homicide.

Even if Chief Defillo genuinely believed he had no basis on which to pursue investigative leads because Glover's death was not yet classified, it would seem that he would be concerned about the damage to NOPD's reputation as a result of a forthcoming "scathing" media report. Defillo had served many years as the Public Information

Officer. He was probably the one person within the ranks of NOPD who most understood not only the way the media operated but the power of the news media as well. It is no secret that the agency has had more than its share of negative stories in the years before and after Hurricane Katrina. In 2008 NOPD was struggling with a soaring homicide rate, an irritated and frustrated populace, and an ever-present hyper-critical media. Into that environment comes intelligence information from a federal agent that things are about to get worse, perhaps much worse.

The job of a PIO is not only to convey information to the media and keep the community informed. Whether acknowledged or not, the job also requires that a PIO protect the image of the agency to the extent that a PIO can. In the case of NOPD it was especially important to keep an eye on what was going on in the media. Public confidence in the agency was incredibly low, and agency administrators knew that without public support there would be no improvement in the crime rate. It is within that context that Defillo, a former PIO, learns that yet another potentially explosive story is being developed, and yet he did nothing to try to seek out its source and attempt to suppress it. He chose the same ill-conceived strategy in checking out the media story as he used with investigating the crime. He exerted minimal effort, if any. It's an illogical strategy that did not serve the agency well.

If Defillo truly believed the Glover story as being "bizarre" then he should have done something to prevent the agency from being maligned in the press yet again. This would be especially important if he thought the story was not only bizarre but false. It was not necessary that Chief Defillo personally try to find out who A. C. Thompson was. It was not necessary for him to personally try to find the story in the "Nation" or on-line at Pro-Publica. He had a Public Affairs staff to do those sorts of things. A simple Google search of the name "A. C. Thompson and media" immediately yields multiple confirmed hits of the reporter, most including contact information. But the administrative malaise that had beset Defillo's investigative follow-up efforts also smothered any effort to try to search out media reports of a police shooting. He claims that to this day he has not read the published reports, a revelation that is shocking to investigators.

As a final option, absent any investigative effort or any attempt to find the news report, Chief Defillo could have conveyed the information provided to him by Agent Jones to the person ultimately responsible for the NOPD, Chief Warren Riley. "I don't think I -- I don't believe I told Riley, because he was chief at the time. I was the chief of Detectives. I felt that my discussion with John Gagliano was sufficient. I believe that I was relying on the Coroner's Office to give me some guidance on what exactly do we have." (Tab 12, page 17, lines 8-13). Even if it can be accepted that Defillo was reasonable in not following up on the Jones information, it seems more than just unusual that he would not share the same information with the Superintendent of Police. Yet he

neither sought the advice and counsel of Riley, nor did he extend the organizational courtesy of conveying the potentially damaging information.

Part of his reasoning sounds very familiar: "I don't think there is a policy today, that mandated me to do that, to go tell a superintendent or former superintendent. I think, you know, maybe hindsight I would as a courtesy, but I think that -- I thought my actions at the time were what was plausible and reasonable." (Tab 12, page 17, lines 13-18) He added, "You know, some chiefs . . . want you to do your job and report your findings, and it's just personalities. I think some chiefs want to know everything. Riley was a kind of chief, I think he really liked his chiefs to be independent and to just -- I guess to stand on their own, two feet of their own, so he wasn't the kind of chief that he wanted you to constantly run to him" (Tab 12, page 18, lines 2-10) A reliance on policy to provide a roadmap for each and every decision an administrator must make suggests a lack of both good judgment and maturity.

Eventually on January 12, 2009, Chief Defillo was contacted by William Tanner. Tanner wanted to know who was going to pay him for his car. After a brief discussion with Tanner, Defillo sent Tanner to speak to Public Integrity Bureau Deputy Chief Bruce Adams. On that same day, Defillo learned from then-Chief Adams about the circumstances of Glover's death which PIB documented on their standard DI-1 form. (Tab 10) It was obvious that Tanner was not going away. Henry Glover's charred remains could no longer be ignored even though the coroner's classification of Glover's death remained unchanged.

In reviewing what we know about Chief Defillo's actions in the period of time between the call from Agent Roland Jones in June of 2008 and the day that William Tanner contacted him about his missing vehicle in January 2009, we note multiple critical failures. For his part Defillo reminds us that he was very busy, as were his homicide investigators. Yet he had hundreds of officers working under his command. Even if Chief Defillo did not have time to look for the media report or the reporter, or check to see if the Tanner vehicle was still behind the levee, or call the Glover family and ask what happened, he had plenty of officers at his disposal.

Defillo's actions were neither reasonable nor responsible. His myopic approach to the management of the information shared with him by Agent Jones created an investigative paralysis. It would forestall justice for seven more months. As the second highest ranking officer within the New Orleans Police Department, Defillo had a clear duty to make mature and reasoned judgments on matters affecting the operation of the agency, particularly those matters which also have an impact on public confidence in its police department. The trust placed in that position is subordinate only to the Superintendent of Police. In this case Defillo had a sworn duty to his agency and his

community to do something, anything beyond simply calling the Coroner's Office about Henry Glover.

Based on the aforementioned information, Chief Defillo was in violation of NOPD Policy, Rule 4, Performance of Duty, paragraph 4, Neglect of Duty, which states in part:

- a. Each employee, because of his grade and assignment, is required to perform certain duties and assume certain responsibilities. An employee's failure to properly function in either of both of these areas constitutes a neglect of duty.
- c. The following acts or omissions to act, although not exhaustive, are considered neglect of duty:
 1. Failing to take appropriate and necessary police action

Therefore, the allegation of a violation of Rule 4, Performance of Duty, and paragraph 4, Neglect of Duty on the part of Deputy Chief Defillo is SUSTAINED; the allegation is supported by sufficient evidence.

2. *Chief Defillo testified that he chose to personally monitor and supervise the investigation into the Glover death when he chose Sergeant Gerard Dugue to conduct the homicide investigation. He still did not have a cause of death, but finally allowed the investigation to proceed, under his direction. Despite his acknowledgement that he in fact was the sole supervisor of this investigation, Chief Defillo admitted he never once inquired as to the specifics of the investigation, nor monitored its progress. Chief Defillo testified that he did not ever require any written updates on the investigation to be completed or submitted to him.*

After William Tanner called Chief Defillo on January 12, 2009, a criminal investigation commenced shortly thereafter.

The following excerpt was taken from Chief Defillo's interview with the FBI on November 17, 2009.

Defillo stated that he talked to Dugue' directly and did not go through Gremillion. Dugue' was given a list of things to do, including interviewing the Captain who was in command of the Fourth District, and also David Warren. Defillo stated that he did tell Dugue' this investigation would be complicated because "they were two years behind". Defillo stated that he has not received any written reports from Dugue' regarding this investigation. Defillo also stated that he did not have scheduled meetings with Dugue' regarding this investigation and that he

was only verbally briefed by Dugue'. Defillo stated he believes Dugue' may have stopped his investigation after the U.S. Department of Justice opened its criminal investigation. Defillo stated, "I am not engaged like I need to be". Defillo also stated that he did previously talk to Captain Jeff Winn who confirmed "there was a guy in the car". (Tab 9, page 3, third paragraph)

Defillo recalled his instructions to Dugue' when he called him into his office to assign the criminal investigation:

. . . I explained to him what we had and I explained to him - I gave him a list of people to speak to who were the people, Winn, Kirsch, Waguespack, Italiano, as well as the ranking officers in the Fourth District. I wanted him to start an investigation into a possible police shooting that happened three years ago -three and a half years earlier at the Habans school. And so I gave him some marching orders and to keep me briefed on the investigation, and so he began the investigation. He was the lone investigator. (Tab 12, page 51, lines 15-24)

As chief of investigations, Defillo exercised administrative prerogative and instructed Dugue' to report directly to the Deputy Chief's office. From the federal trial testimony by Defillo while being questioned by Ms. Knight:

- Q. And that's what I was going to ask next. So what were your instructions at that time?
- A. After speaking to those individuals, I assigned Sergeant Gerald Dugay, who was a senior homicide investigator, to look into these allegations. I brought Sergeant Dugay into my office. I also knew that Captain Gremillion was previously assigned to the Fourth District, and he was at that time commander of homicide when I assigned the case. So I wanted to make sure that there wasn't any sort of impropriety, I excluded Captain Gremillion from that process, and I wanted Sergeant Dugay to answer directly to me, once he began the investigation and as the investigation progressed and also the end result of the investigation.
- Q. And when you say that you wanted Captain Gremillion to be excluded from the process, what specifically do you mean by that?
- A. That he would not be in the chain of command, that any information that Sergeant Dugay had or Sergeant Dugay wanted or information that he may have gathered, he was to answer directly to me. (Tab 11, page 12, lines 21-25 and page 13, lines 1-13)

In his interview with LSP investigators Defillo says that he insisted that Dugue' report directly to him because this was a criminal investigation of a police shooting. He acknowledged that not only was the Captain being bypassed but the Lieutenant was being bypassed as well. "I felt at the time it was the best way to handle this investigation, that

Sergeant Dugue would answer to me, because we are talking about a police shooting situation, and I thought that was the appropriate thing to do.” (Tab 12, page 54, lines 11-15) Defillo also recognized that such a rearrangement of reporting protocol was unusual and unprecedented. “This . . . was the first (time). It was the first, I mean. There was so many things that happened during post-Katrina and during Katrina that (we) rewrote the books on a lot of things that – the way we do business. So this was the first.” (Tab 12, page 54, lines 20-24)

Once Defillo assigned Dugue’ to the case and instructed him as to the investigator’s unique chain of command, then Defillo became *responsible* for supervising the investigation. An inquiry as sensitive as this should generate a fairly close degree of supervision and be worthy of a high priority. Yet implausibly, Defillo required no written reports. Despite the explosive nature of the allegations by Tanner, Dugue’ was not relieved of his other workload. He had other cases to manage. Everybody, it would seem was very busy. As to the seeming slow pace of the investigation, Defillo told LSP investigators, “. . . (He) may have done some interviews, but (moving the investigation along) was very difficult, very difficult. Then Mardi Gras came – of course, he’s got other cases to work, so this was not the only case he was assigned to.” (Tab 12, page 55, lines 19-21)

Insofar as Defillo’s supervision of Dugue was concerned, it seemed to be casual, superficial and inadequate. He stated that he only received verbal updates from Dugue’. “Maybe once a week, about once a week, we would talk. He would come in my office and brief me on what he was doing, and -- so maybe once a week.” (Tab 12, page 56, lines 4-6) But Defillo required no written updates; no reports memorializing the conduct of the investigation. According to media reports of Defillo’s Grand Jury testimony, jurors were clearly frustrated about the lack of written updates. Even those outside the police environment find it odd that a supervisor would not require formal documentation of something as important as police involved homicide investigation. The following exchange took place between an unnamed juror and Defillo:

- Q. So in seven months time, you never required any type of monthly report or weekly report or something?
- A. He was briefing me verbally on doing the interviews and – but in terms of generating the full report, he hadn’t done that, no.
- Q. Y’all don’t require like a briefing report? Y’all don’t require any documentation?
- A. No. It’s – unfortunately, no. No. (Times Picayune, May 13, 2011)

Had Defillo been as engaged as a homicide supervisor should have been, he would have discovered that Dugue’ was compelling statements from NOPD officers whose criminal culpability had not yet been ruled out. The effect of a compelled

statement taken as part of a criminal investigation essentially immunizes the officer's testimony from any independent use in a criminal prosecution.

He stated that he never authorized Dugue' to compel a statement from any officer interviewed for the criminal investigation. Chief Defillo stated that compelling a statement would be improper for a criminal investigation. A compelled statement would only be proper in an internal, administrative investigation. As a former commander of the Public Integrity Bureau, Defillo knew full well the significance of compelling testimony from potential targets in a police investigation. When questioned by LSP investigators about whether he directed Dugue' to compel statements, he replied: "No. He could not have, no. If the officer wanted to provide the statements or provide information as to their knowledge of this event, then we would accept it, but it would not be compelling, no, no." (Tab 12, page 56, lines 14-17) Had Defillo reviewed investigative notes or files maintained by Dugue' he would have discovered that statements were being compelled.

If he knew of Dugue's actions, he was complicit in the improper investigative procedures. If he did not know of Dugue's actions, he was negligent in his supervision. In either case, Defillo did not fulfill his obligation to properly supervise this critical inquiry.

Had Defillo more closely supervised what Dugue was doing, he would have discovered that he failed to audio record statements from NOPD officers that he thought were potential subjects of the investigation. However he audio recorded the statements of non NOPD witnesses, according to his notes and draft report.

Moreover, it is reasonable to expect that an investigation as serious as the Henry Glover incident should have been completed in a timely manner. Sergeant Dugue' was assigned to the investigation for more than five months before his computer and files were seized by the FBI. The report was never completed. The lack of urgency to complete the report by Dugue' suggests that either Defillo did not make this a priority for the investigator, or alternatively if it was a priority, there was an apparent lack of supervisory oversight and pressure to complete the report. In either case, there was a failure in supervision.

Based on the aforementioned information, Deputy Chief Defillo was in violation of NOPD Policy, Rule 4, Performance of Duty, paragraph 4, Neglect of Duty, which states in part:

- a. Each employee, because of his grade and assignment, is required to perform certain duties and assume certain responsibilities. An employee's failure to properly function in either of both of these areas constitutes a neglect of duty.

- b. An employee with supervisory responsibilities shall be in neglect of duty whenever he fails to properly supervise subordinates...

Therefore, the allegation of a violation of Rule 4, Performance of Duty, paragraph 4, Neglect of Duty on the part of Deputy Chief Defillo is SUSTAINED; the allegation is supported by sufficient evidence.

3. *Chief Defillo testified that he interviewed Captain Jeff Winn about his (Winn's) knowledge of this event in January or February of 2009. Chief Defillo stated that Captain Winn told him that the body that showed up at Habans school may have been shot by a police officer in the Fourth District. Chief Defillo also alleges Captain Winn told him he obtained that information from William Tanner, one of the persons detained when Glover's body arrived at the school.*

The third allegation refers to conversations between Captain Winn and Chief Defillo. It suggests that Defillo failed to act on information provided by Captain Winn.

According to Defillo's testimony in the federal trial when questioned by Mr. Lemoine:

- Q. Do you remember, do you remember saying - - I just asked you about your memory and it didn't seem to be a problem for you, but do you remember being asked questions about what Captain Winn told you? I am on page 32, line 9. This is where you're talking about acquiring basic information. So what did Officer or Captain Winn tell you? Do you remember?
- A. Yes.
- Q. And do you remember giving this answer: "Yes, he said that, um, that a young man had driven a car to the school, and there was a dead body in the back seat. Q. And what did he say happened? A. He - and I'm trying, I'm tapping my memory right now."
- And, I mean, I think I know, but what do you mean by saying I'm tapping my memory?
- A. I guess at that time I couldn't recall certain information. However, in my conversation with Captain Winn, he gave very specific information in terms of what occurred at Habans School. (Tab 11, page 22, lines 20-25 and page 23, lines 1-11)

The questioning of Defillo continued by Ms. Knight:

- Q. Go ahead.
- A. You know, when I spoke to Captain Winn, in my mind I was almost prepared for him to tell me it never happened. But when I spoke to Captain Winn and I asked

him, I had received information that a person may have been shot by a police officer and he was driven to Habans School and that he was dead inside the car, can you confirm this actually occurred. And he said, "Yes, I can confirm it." And I said, "Was he dead in the car?" He said, "Yes." I then asked him, "What did you do with the body?" He said, "I directed my officers to take the body, with the car, up to the levee away from the school."

Q. Did he indicate to you how he knew - - or whether or not he knew it was involving a police shooting?

A. Yes, he did? He said that this was - - this may have - - he used the word may have been involving a police shooting in Algiers.

Q. And did he know how - - did he explain how he knew that? (Tab 11, page 39, lines 12-25 and page 40, lines 1-2)

[The Court sustained an objection to the question, and there was no further follow-up in reference to Captain Winn.]

Based on testimony given by Captain Winn, he admitted that he responded to Habans School after learning that his officers chased a vehicle into the parking area of the school. The car had a body in the back seat, and he eventually ordered his officers to remove the vehicle and body, and relocate both to the back side of the levee near the Fourth District Station and the U.S. Border Patrol office. Captain Winn denied ever knowing that the dead body had been shot by a police officer.

Based on the aforementioned information by both Captain Winn and Chief Defillo, the third allegation of Rule 4, Performance of Duty, paragraph 4, Neglect of Duty is **NOT SUSTAINED**, which is defined as insufficient evidence to prove or disprove the allegation.

It should be noted that the Federal Grand Jury testimony in reference to the Henry Glover criminal investigation was not released by the Department of Justice. Grand Jury testimony was not available to investigators to review or compare to sworn testimony or statements given by key parties involved in this administrative investigation.

Concur / Do Not Concur

Concur / Do Not Concur

Deputy Superintendent Arlinda P. Westbrook
Bureau Chief, Public Integrity Bureau

Ronal W. Serpas
Superintendent of Police

